



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/516,500

12/02/2004

Juan Luis Hancke Orozco

Herbal Powers

4925

22925

7590

11/18/2009

PHARMACEUTICAL PATENT ATTORNEYS, LLC

55 MADISON AVENUE

4TH FLOOR

MORRISTOWN, NJ 07960-7397

EXAMINER

RAHMANI, NILOOFAR

ART UNIT

PAPER NUMBER

1625

NOTIFICATION DATE

DELIVERY MODE

11/18/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@LicensingLaw.net

administration@LicensingLaw.net

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE  
BOARD OF PATENT APPEALS AND INTERFERENCES

---

*Ex parte* Juan Luis Hancke Orozco, and Rafael Augustin Burgos Aguilera

---

Appeal 2009-015020  
Application 10/516,500  
Technology Center 1600

---

Decided: November 16, 2009

---

DECISION ON PETITIONS

This is a decision on two petitions filed on October 8, 2009, both entitled “Rule 41.3 Petition for Supervisory Intervention.” One petition (“First Petition”) requests that “the Board of [Patent] Appeals [and Interferences] strike the Examiner’s August 21, 2009 *Revised Second Supplemental Examiner’s Answer*.” First Petition, p. 1. (emphasis in original). The other petition (“Second Petition”) requests that “the Board of [Patent] Appeals [and Interferences] issue a corrected *Docketing Notice* because it will avoid confusion regarding what arguments are, and are not, before the Board.” Second Petition, p. 1. (emphasis in original).

FINDINGS

1. In this application, a Final Rejection was entered on January 19, 2007.

2. A Corrected Appeal Brief was filed on June 13, 2007, an Examiner's Answer was entered on August 29, 2007, and a Reply Brief was filed on September 4, 2007.
3. A Supplemental Examiner's Answer was entered on October 24, 2007, and a Supplemental Reply Brief was filed on November 8, 2007.
4. Another Supplemental Examiner's Answer was entered on December 3, 2007, and an Order Returning Undocketed Appeal to Examiner was entered on March 31, 2009 returning the application to the Examiner for correction of formal defects in the preceding Supplemental Examiner's Answer.
5. A still further Supplemental Examiner's Answer was entered on August 21, 2009, and an Appeal Docketing Notice was mailed on September 21, 2009. The First and Second Petitions followed on October 8, 2009.
- 6 In respect to appellant responses to supplemental examiner's answers, 37 C.F.R. § 41.43(b) provides that:

If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

## DISCUSSION

As indicated by the chronology of papers filed by Appellants and papers entered by the Office outlined above, it is clear that the Docketing Notice of September 21, 2009 was entered one month after entry of the last-entered Supplemental Examiner's Answer of August 21, 2009. Thus, the Docketing Notice was entered before the two-month period for response to

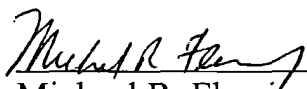
the Supplemental Examiner's Answer of August 21, 2009 had expired. The Docketing Notice, therefore, was entered prematurely. The Board should not have entered the Docketing Notice and taken jurisdiction of the Appeal until after the period for response to the Supplemental Examiner's Answer of August 21, 2009 had expired.

### DECISION

Accordingly, the Docketing Notice of September 21, 2009 is rescinded and the Appeal is remanded to Technology Center 1600 for completion of the briefing or expiration of the period for completion of such briefing.

In view of the remand to the Technology Center, the First and Second Petitions addressed to the Board are dismissed as moot. Any objections or disagreements that Appellants may have with the Supplemental Examiner's Answer of August 21, 2009, should be addressed in a Supplemental Reply Brief and/or Petition to the Technology Center.

Appellants are given a period of two months from the mailing date of this Decision to respond to the Supplemental Examiner's Answer of August 21, 2009.

  
\_\_\_\_\_  
Michael R. Fleming  
Chief Administrative Patent Judge

Appeal 2009-015020  
Application 10/516,500

Mark Pohl  
Pharmaceutical Patent Attorneys LLC  
55 Madison Avenue, 4<sup>th</sup> Floor  
Morristown, NJ 07960-6397